

# **EXHIBIT E**

I respectfully submit the following Application and Declaration for Appointment to the Plaintiffs' Steering Committee:

- 1) I represent Plaintiff Brenda Bansale, 1:13-cv-10296-FDS, before this Court, having been admitted to practice pursuant to MDL Order No. 1. Bansale v. NECC was filed in the US District Court for the Eastern District of Michigan on October 15, 2012.
- 2) I have personally been involved in the NECC litigation from its inception. Bansale v. NECC, my client's action, was the first case against NECC filed in Michigan. Bansale is one of the original cases consolidated by the JPML into this MDL, upon our motion to create one mass tort action.
- 3) My firm currently represents nearly 70 Michigan victims of NECC's contaminated steroids, as much as any other law office in the State. I represent victims in both the Eastern and Western Districts of Michigan, who were injected by each of the four clinics that received contaminated steroids from NECC. I have been referred clients by attorneys across the State, including from attorneys in the Traverse City area in northern Michigan. I also represent the sole victim of the contaminated steroid disaster in Idaho, and at least one victim in Ohio.

- 4) As one of the first filers, my office participated in the early stages of the litigation, including contributing to the inspection of the premises ordered by this Court, participating in conference calls to discuss strategy, and evaluating documents produced prior to the Bankruptcy petition. I personally reviewed each insurance policy that covers NECC and its officers/directors/employees, producing a lengthy memo outlining the issues raised by the insurers and the basis for finding coverage despite the reservation of rights they filed; I then presented these findings to the attorneys who appeared at the JPML hearing in Florida.
- 5) After NECC filed its Bankruptcy petition, the US District Attorney appointed Brenda Bansale to the Unsecured Creditors Committee and I am her representative. In that capacity, I have daily communications with Bankruptcy counsel and committee members, strategizing how to best secure sufficient assets to compensate all the victims of NECC's perfidy. I have had direct conversations with Paul Moore, the Court-appointed Bankruptcy Trustee on issues involving Michigan Law and its effect on the Trustee's actions. Further, as a consequence of the dozens of clients I represent, I have reviewed innumerable medical records describing every reported ailment caused by the fungus with which they were injected. Using that knowledge, I have worked closely with my fellow committee members to create a form to categorize these injuries for the trustee and fellow counsel, and have sought out specific advice from Michigan physicians, who are among the country's leading experts on fungal infections.
- 6) My personal and professional background qualifies me for this position. I have been practicing in the field of complex personal injury litigation for my entire career, since

joining my father's firm upon my graduation from Harvard Law School in 1990. I have extensive experience in both products liability and medical malpractice litigation, two areas of law that are implicated in the cases at bar. I also have spent many years handling insurance coverage disputes, analyzing and contesting the nature and extent of policy exclusions such as those implicated here. My practice has included both Federal and State cases, and has generated multiple, relevant reported decisions on controlling areas of law in both Federal and State Courts. (For example, Michigan's Products Liability Law was recently clarified in Croskey v. BMW NA, 532 F.3d 511 (6th. Cir 2008); Medical malpractice trial and appellate work are exemplified by Lindberg v Munson Medical Center, (Traverse County Circuit Court No. 09-027080-NH, Trial 3/2010; Mich. Court Appeals No. 300919); Insurance Coverage disputes include Farmers Insurance Exchange v. Thomas, Mich. Court Appeals No. 296150 03/10/2011).

- 7) Aside from my litigation experience, I have significant contacts with the attorneys in the State of Michigan, and a platform to ensure rapid dissemination of key information as events warrant. I am the current President of the Michigan Association for Justice (MAJ), the state chapter of the national organization of Plaintiff's personal injury attorneys (AAJ). In that capacity, I represent 1600 practicing personal injury attorneys with whom I communicate on a regular basis through direct correspondence and email. The Court may appreciate that garnering support from prominent Michigan attorneys such as The Fieger Law Firm, The Law Offices of Sam Bernstein and Sommers Schwartz, who all compete with each other and my own office for clients is an accomplishment that speaks to my ability to create consensus for action.

As the Court shall see from the attached correspondence, most of the major Michigan attorneys involved in this tragedy, representing the vast majority of the individuals injured in our State, and therefore a significant portion of those injured nationally, support my petition. (See Letters supporting nomination of Lipton, Exhibits). Among these attorneys is Mr. Tom Waun, the current chair of the State Bar of Michigan's Negligence Section, and Mr. Tim Smith, an attorney from Traverse City who has himself been infected by the contaminated steroid as has his father.

- 8) Finally, to ensure that this litigation and the PSC has the resources and the capacity to fully litigate all potential claims for the benefit of the victims, I have partnered my office with the Miller Law Firm with whom I share a co-counsel arrangement, and with whom I have a long standing professional and personal relationship. Miller Law, and its founding member, Powell Miller, have extensive experience in complex class action and mass tort litigation. For the past several years, Mr. Miller has served as Co-Chair of the American Bar Association MDL and Class Procedures Subcommittee. He is currently serving in the position of lead or co-lead counsel on numerous cases including In re AIG 2008 Securities Litigation (SD New York) (Case No. 08-cv-04772); Holder et. al. v. Enbridge et. al. (WD Mich. 10-cv-751); In re Refrigerant Compressors Antitrust Litigation (ED Mich. 09-md-02042); In Re Caraco Pharmaceutical Laboratories, Ltd. Securities Litigation (ED Mich.) (Case No. 2:09-cv-12830); and The Board of Trustees of the City of Birmingham Employees et. al. v. Comerica Bank et. al. (ED Mich. 09-13201). Miller Law has more than 26 attorneys, significant experience supporting complex document and deposition laden discovery, and has more than adequate capacity to effectively assist in this case.

- 9) The Court has already made passing comments on the necessity of including Michigan counsel on the leadership team that directs this litigation. Michigan has been saddled with more than 1/3 of all the cases nationally, and nearly doubles the number of victims in the next most affected State. The majority of these cases are from one clinic in Brighton, Michigan, less than 30 miles from my office. The epicenter of this treatment nationally is at St. Joseph Mercy Hospital in Ypsilanti and the University of Michigan in Ann Arbor, both immediately reachable by a short commute, allowing me direct and personal access to individuals likely to be key players in these claims. With a statewide practice before this litigation, and as the consensus choice of most Michigan firms, my office is uniquely qualified for this position.

RESPECTFULLY SUBMITTED this 18th day of March, 2013.

FOR PLAINTIFF BRENDA BANSALÉ



By:

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March 18, 2013

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March 19, 2013

\*ADMITTED DISTRICT OF COLUMBIA  
\* ADMITTED STATE OF MINNESOTA  
+ ADMITTED STATE OF WISCONSIN  
\*\*ADMITTED STATE OF CALIFORNIA

Hon. F. Dennis Saylor, IV  
John Joseph Moakly United States Courthouse  
Courtroom No. 2  
One Courthouse Way  
Boston, MA 02210

Re: Civil Action # 12-12052-FDS  
In Re: New England Compounding  
Pharmacy, Inc. Products Liability Litigation

Dear Judge Saylor:

I write to you to nominate Marc Lipton for membership on the Plaintiffs' Steering Committee for the NECC MDL. By way of my background, I reside in Traverse City, Michigan. Traverse City has the unfortunate privilege of being one of the cities here in Michigan that received contaminated compounds from NECC. Not only was I personally injected and infected by the compound supplied by NECC, but so was my father. My firm has referred a number of individuals to Marc Lipton's law firm. I am aware that there are law firms both locally and state wide that were looking for referrals for these cases and because, not only my professional, but personal experience with NECC and the damages they have caused, the only choice for myself personally and this firm's clients was Marc Lipton's law firm. My firm, Smith & Johnson, Attorneys, P.C., is the largest personal injury law firm in Traverse City, Michigan and probably north of Grand Rapids. I have been an AV rated attorney since 35 years of age (10 years) and my firm carries a preeminent rating through Martindale Hubbell. I sit on the Michigan Association of Justice Executive Board with Marc Lipton, who, as you know is our President. Not only have I interacted with Mr. Lipton on an educational level as we have both lectured and presented at various seminars throughout the state, but I have also worked with him on a referral basis on a number of occasions when our respective client's interests are outside of our respective home towns.

Since the inception of the outbreak, I have been working with Marc and his firm on the contaminated steroid cases. I can tell you, not only from the standpoint of an individual who has been contaminated, but also from the standpoint of an attorney who is representing individuals who have been contaminated, that Marc is the only choice here in Michigan for membership on the committee for several indisputable reasons.



Smith & Johnson, Attorneys  
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1. The majority of firms that are handling any NECC cases in Michigan support Marc and he personally represents the majority of victims here in Michigan.
2. It is my understanding that Marc filed the first petition for the creation of the MDL.
3. From my conversations with Marc, I understand that he is working closely with bankruptcy counsel because one of his clients was selected to serve on the NECC Plaintiff's Unsecured Creditors Committee.
4. Marc currently serves as the President of the Michigan Association for Justice for the very reason that his reputation for organization and detail is unparalleled.
5. Marc has an extensive background in complex litigation and has the highest reputation for client satisfaction from the result standpoint that I am aware of here in the State of Michigan.

Please understand that I, as a contaminated individual, and as an attorney representing contaminated individuals, could have taken my own personal business and my referral business to any attorney in the state. The only person that I trust in the State of Michigan to handle these particular claims on behalf of my family and my clients is Marc Lipton. It is one thing to take out an ad in the local newspaper to attract clients, but it is entirely another thing to have the expertise and ability to carry those claims to their successful conclusion. For that reason I support his appointment to the NECC MDL Plaintiffs' Steering Committee.

Sincerely yours,

SMITH & JOHNSON, ATTORNEYS, P.C.

  
Timothy P. Smith

TPS:wmw



# SOMMERS SCHWARTZ

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March 17, 2013

Hon F. Dennis Saylor, IV  
John Joseph Moakly United States Courthouse  
Courtroom No. 2  
One Courthouse Way  
Boston, MA 02210

Dear Judge Saylor:

I write to nominate Marc Lipton for membership on the Plaintiffs' Steering Committee for the NECC MDL. By way of my background, my firm currently represents 22 parties injured by contaminated steroid injections supplied by NECC to Michigan health care facilities. I have been handling complex medical malpractice and product liability cases for over 30 years. My firm, Sommers Schwartz, is one of the largest, oldest and most well respected plaintiff personal injury and complex litigation firms in Michigan. My experience in mass tort litigation began with representing many woman injured by the Dalkon Shield. Currently, I am involved in representing numerous clients in various MDL product liability proceedings.

I have been collaborating closely with Marc Lipton on the contaminated steroid cases since the inception of the outbreak. Marc would be an excellent choice for membership on the committee for several compelling reasons:

- Marc is the current President of the Michigan Association for Justice and a known master of detail and organization;
- Marc has the support of the majority of firms handling NECC cases in Michigan and he personally represents more than 60 of the victims;
- Marc filed the first petition for the creation of the MDL;
- In Michigan and elsewhere, Marc has lectured on various topics related to the litigation;

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LAW OFFICES

- One of Marc's clients was selected to serve on the NECC Plaintiffs' Unsecured Creditors Committee and, as such, Marc has worked closely with bankruptcy counsel;
- Marc is very experienced in complex litigation and has a reputation for exceptional legal representation of his clients;

Furthermore, from my personal knowledge, I know that Marc has the respect and confidence of those attorneys in Boston and elsewhere who have emerged as leaders in this litigation.

Please feel free to contact me directly should you desire any further information.

Sincerely,

SOMMERS SCHWARTZ, P.C.

A handwritten signature in black ink, appearing to read "Robert B. Sickels". The signature is written in a cursive, flowing style with a prominent initial "R" and a long, sweeping underline.

Robert B. Sickels

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**TERRY A. DAWES**

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March 18, 2013

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION

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Civil Action  
No. 13-02419-FDS  
THE HONORABLE F. DENNIS SAYLOR, IV  
John Joseph Moakley United States Courthouse  
Courtroom No. 2  
One Courthouse Way  
Boston, MA 02210

Dear Judge Saylor:

On behalf of the law firm of Fieger, Fieger, Kenney, Giroux, Danzig & Harrington, PC, I am honored to recommend Mr. Marc Lipton for appointment to the Plaintiff Steering Committee (PSC) in the multidistrict litigation (MDL) involving New England Compounding Company (NECC).

The Fieger Law firm currently represents seventy-nine clients impacted by NECC's contaminated steroid solution. Of those cases four involve death while the remainder involves fungal meningitis, fungal abscess and other sequelae.

Mr. Lipton is well known and respected among Michigan attorneys. He is very active in statewide legal organizations including the Michigan Association for Justice. Mr. Lipton has a longstanding relationship with the Fieger Firm; he has proven himself an outstanding attorney who maintains the highest legal and professional standards.

Mr. Lipton and I currently serve together on the Committee for Unsecured Creditors in the NECC Bankruptcy; therefore, I have firsthand knowledge of his abilities and talents. Mr. Lipton is very qualified and very well suited to serve on the PSC.

Respectfully submitted,

FIEGER, FIEGER, KENNEY, GIROUX, DANZIG & HARRINGTON, PC

A handwritten signature in black ink, appearing to read 'T. Dawes', with a long horizontal flourish extending to the right.

Terry A. Dawes

**GOETHEL • ENGELHARDT, PLLC**  
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March 17, 2013

Hon. F. Dennis Saylor, IV  
John Joseph Moakley United States Courthouse  
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One Courthouse Way  
Boston, MA 02210  
March 12, 2013

Re: *Civil Action No. 12-12052-FDS*  
*IN RE: NEW ENGLAND COMPOUNDING*  
*PHARMACY, INC. PRODUCTS LIABILITY LITIGATION*

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Dear Judge Saylor

I write to recommend/nominate Marc Lipton to serve as a member of the Plaintiff's Steering Committee for the MDL litigation involving the above referenced NECC cases.

By way of introduction, I am a trial lawyer practicing in Michigan for 33 years. My practice concentration is medical malpractice, personal injury and wrongful death. Over the years, I have had a heavy concentration of neurosurgery and spine related cases including many cases relating to use/misuse and injury emanating from steroid injections. I am a many year member of the executive board of our state trial lawyers association (Michigan Association for Justice or MAJ).

I currently have approximately 15 Fungal Meningitis cases, including 2 death claims. We continue to intake referrals and clients newly diagnosed with either the virus or abscess. Our offices are located in Ann Arbor, MI the situs of St. Joseph Mercy Hospital where the majority of the Michigan FM victims have been treated. We have been actively involved from the outset. You are welcome to visit our website, the Center for Medical Truth and Justice ([www.cmtjustice.com](http://www.cmtjustice.com)) and the blog we have been running now for months on FM.

To my knowledge, Mr. Lipton has as many FM cases as any other lawyer in Michigan (60+). He is a lawyer of the highest caliber. He is the current President of our state trial lawyers association (MAJ). Our practices are similar and we interact regularly, on issues ranging from litigation strategy, expert witness resources and referral of cases and clients. I believe I can speak as well as anyone regarding the benefit Marc would bring to the Plaintiff's Steering Committee. He was the first lawyer in Michigan to file suit. He filed the MDL request. He has extensively investigated NECC and related entities and is a member of the unsecured creditors committee in the current bankruptcy proceedings. He has lectured twice on NECC and is scheduled to speak again. He clearly has a significant interest in obtaining justice for the FM

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CIVIL JUSTICE ATTORNEYS

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victims, for what they have and continue to endure. For those of us in Michigan handling these cases Marc is the first line resource to whom we turn to stay current.

Above all else, Marc is one of the hardest working lawyers I know. He would be an asset to the Steering Committee. Please do not hesitate to contact me if you have any questions or need additional information.

Very Truly Yours,  
GOETHEL ENGELHARDT, PLLC



Stephen B. Goethel

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March 18, 2013

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION

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Civil Action

No.: 13-02419-FDS

THE HONORABLE F. DENNIS SAYLOR, IV  
John Joseph Moakley United states Courthouse  
Courtroom No. 2  
One Courthouse Way  
Boston, MA 02210

Dear Judge Saylor:

The purpose of this letter is to recommend the appointment of Mark Lipton to the NECC MDL Plaintiff Steering Committee.

I have been a trial lawyer for the past 30 years representing plaintiffs in medical malpractice, product liability, and general liability. I currently sit as the Chairperson of the Negligence Section of the State Bar of Michigan. I have also been nominated as the Michigan Association of Justice's next officer on its Executive Board. I currently have two of the fungal meningitis cases involving NECC, one of those being a wrongful death claim.

Mark Lipton is an excellent attorney with significant experience in cases of this nature. It is my understanding that he has the largest number of fungal meningitis cases of any attorney in our state. He was the first to file a lawsuit in Michigan. I have had several discussions with Mr. Lipton about these cases and it is clear to me that he has extensively investigated the situation and as always is very well prepared. As far as I know, his appointment to the Plaintiff Steering Committee would be supported by a vast majority of the Michigan lawyers handling these cases.



THE HONORABLE F. DENNIS SAYLOR, IV  
March 18, 2013  
Page Two

Thank you for your time and attention to this matter. If you should have any questions, please feel free to contact me at any time.

Very truly yours,

WAUN & PARILLO, PLLC

By:  Thomas W. Waun

TWW/dag



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March 19, 2013

RE: MDL 2419  
Leadership Structure

Dear Hon. Judge Saylor:

I write to recommend the appointment of Marc Lipton to the PSC for the New England Compounding MDL. I have worked here in Michigan with Marc from the beginning and over the course of the meningitis outbreak. I can tell you without reserve that he is incredibly energetic and focused in his approach to the legal issues that are involved.

Initially, we were involved in filing the first case in Michigan and the original petition to consolidate this matter before the JPML. We worked in the trenches on the forefront of the litigation and incredibly hard to ensure that the cases were consolidated as they are now for the benefit of all litigants. During this process, Marc's focus was the best result for the litigants as a whole.

In Michigan, Marc is the President of the Michigan Association of Justice, and an experienced personal injury attorney who is active in protecting the rights of the injured.

In this case, Marc has gone above and beyond already in volunteering and seeking appointment to the Creditor's Committee. This unpaid position requires an enormous time commitment from its members, and Marc was eager to participate despite the lack of monetary return for his efforts because of his strong beliefs that it was important to protect the rights of our injured plaintiffs in the bankruptcy proceeding as well as the MDL.

PHONE

FAX

WEB

I write this letter of support as the attorney for over forty injured plaintiffs in this litigation who hale both from Michigan and nationally. I have years of experience in mass tort litigation and have served on PSC's for the Zimmer, American Medical Systems, Boston Scientific, Bard, Ethicon, Coloplast and MI Windows and Doors litigations. Despite my keen interest and experience in mass tort litigation generally and this litigation specifically, I believe that Marc's quest to lead this matter on behalf of the Michigan constituency is one deserving of my support.

Therefore, I am hopeful that you favorably consider Marc Lipton's request to serve on the PSC for this litigation. Please feel free to contact me should you have any inquiries.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Alyson Oliver', is placed over a light gray rectangular background.

Alyson Oliver